

Notice of Allowability

Application No.

10/695,469

Examiner

Jyoti Chawla

Applicant(s)

HAYNES ET AL.

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to RCE July 30, 2007.
2. ☒ The allowed claim(s) is/are 1-3,6-11,14 and 15.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

REASONS FOR ALLOWANCE

Continued Examination Under CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 15, 2006 has been entered.

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Examiner's Amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Thaddius Carvis on September 10, 2007.

- **Please amend claim 1 to read as follows:**

A process for preparation of aerated, gelatin-containing confections comprising:

- (a) heating a mixture of mono, di and oligosaccharides in water to fully dissolve all sugar and concentrate the mixture and obtain a concentrated sugar solution;
- (b) cooling the concentrated sugar solution;
- (c) separately mixing dry sucrose and dry gelatin to form a dry blend, wherein the dry gelatin and dry sucrose have similar particle sizes of less than 8 mesh;
- (d) hydrating the dry blend of sucrose and gelatin by mixing with water at a first temperature not exceeding 40°C and holding at a temperature not exceeding 40°C for a time sufficient for the gelatin to take up at least twice its weight in water to form a slurry of hydrated gelatin in a sucrose solution;
- (e) then heating the slurry to a higher temperature to dissolve the gelatin and form an aqueous solution of sucrose and gelatin;
- (f) admixing the aqueous solution of sucrose and gelatin with said concentrated sugar solution of step (a) to prepare a confection composition; and
- (g) aerating the confection composition, wherein the processing steps (a) to (f) cause[s] less trans-to-cis isomerization in the gelatin than would otherwise occur in processing wherein gelatin and sucrose are mixed after forming separate solutions of each.

- **Please cancel claims 16-20.**

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

Processes of preparation of aerated gelatin-containing confections have been known in the art. Zietlow et al., of record provide a method of preparation of aerated confection by mixing aqueous solution of gelatin to the concentrated sugar solution at a preferred temperature range of 120-160⁰ F or 48.8 to 71⁰ C and then adding sugar crystals to the sugar syrup-gelatin mixture prior to aeration. Adesso also of record makes water soluble gelatin where the mixture of dry gelatin and sugar is added to boiling water, i.e., 100⁰ C, and the mixture of gelatin and sugar in hot water is whipped before drying the product as flakes. The references of record however, do not teach of a process of making aerated gelatin-containing confection where the dry blend of sugar and gelatin is prepared and hydrated, such that the hydration of gelatin step takes place at a low temperature not exceeding 40⁰ C, causing less trans-to-cis isomerization and diminished desirable properties of gelatin such as extensibility and elastic recovery, as disclosed by the applicant on pages 7-8, paragraph [0025] and as shown by Figure 5 of the originally filed disclosure. At higher temperatures, i.e., temperatures above 40⁰ C, the gelatin does not become fully hydrated due to the rapid dissolution of sucrose in the free water, as disclosed by the applicant on pages 9-10, paragraph [0030] of the originally filed disclosure. Also processing of gelatin at lower temperatures as recited in claim 1, and as disclosed by the applicant in examples 2, 3 and 5 results in less trans-to-cis isomerization of gelatin in the process of making aerated gelatin-containing confections.

There was no specific suggestion or motivation in the prior art to show that hydration of gelatin was to be done at temperatures not exceeding 40⁰ C in order to cause less trans-to-cis isomerization of gelatin as disclosed by the applicant on pages 7-8, paragraph [0025] of the originally filed disclosure. The closest prior art is focused on different methods to make aerated confections from sugar and gelatin mixture where the processing of gelatin was done at a higher temperature.

Thus one of ordinary skill in the art would not have expected, nor could have predicted, the unexpected results of reduced trans-to-cis isomerization of gelatin by initially processing the gelatin and sugar at a temperature not exceeding 40⁰ C, and also performing the steps of the process of making aerated gelatin-containing confections at a lower temperature than suggested by the closest prior art. Thus process for preparation of aerated, gelatin-containing confections comprising separately mixing dry sucrose and dry gelatin to form a dry blend, wherein the dry gelatin and dry sucrose have similar particle sizes of less than 8 mesh and hydrating the dry blend of sucrose and gelatin by mixing with water at a first temperature not exceeding 40°C and holding at a temperature not exceeding 40°C for a time sufficient for the gelatin to take up at least twice its weight in water to form a slurry of hydrated gelatin in a sucrose solution; and later aerating the confection composition, wherein less trans-to-cis isomerization in the gelatin than would otherwise occur in processing wherein gelatin and sucrose are mixed after forming separate solutions of each, in the instantly claimed invention is free of the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jyoti Chawla
Examiner
Art Unit 1761



KEITH HENDRICKS
PRIMARY EXAMINER